

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**James Zarian,**

Plaintiff,

v.

**Yervand Mikailian**, in individual  
and representative capacity as  
trustee;  
**Kitty B. Mikailian**, in individual  
and representative capacity as  
trustee;  
**Serob Habesyan**; and Does 1-10,  
Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For** Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act

Plaintiff James Zarian complains of Defendants Yervand Mikailian, in individual and representative capacity as trustee; Kitty B. Mikailian, in individual and representative capacity as trustee; Serob Habesyan; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He suffers from muscular dystrophy, cannot walk and uses a wheelchair for mobility.

1       2. Defendants Yervand Mikailian and Kitty B. Mikailian, in individual and  
2 representative capacity as trustees, owned the real property located at or about  
3 13738 Ventura Blvd., Sherman Oaks, California, in November 2016.

4       3. Defendants Yervand Mikailian and Kitty B. Mikailian, in individual and  
5 representative capacity as trustees, own the real property located at or about  
6 13738 Ventura Blvd., Sherman Oaks, California, currently.

7       4. Defendant Serob Habesyan owned the Kitchen Bath & Flooring Center  
8 (also referred to as Arch Stone Design) located at or about 13738 Ventura  
9 Blvd., Sherman Oaks, California, in November 2016.

10       5. Defendant Serob Habesyan owns the Kitchen Bath & Flooring Center  
11 store ("Store") (also referred to as Arch Stone Design) located at or about  
12 13738 Ventura Blvd., Sherman Oaks, California, currently.

13       6. Plaintiff does not know the true names of Defendants, their business  
14 capacities, their ownership connection to the property and business, or their  
15 relative responsibilities in causing the access violations herein complained of,  
16 and alleges a joint venture and common enterprise by all such Defendants.  
17 Plaintiff is informed and believes that each of the Defendants herein,  
18 including Does 1 through 10, inclusive, is responsible in some capacity for the  
19 events herein alleged, or is a necessary party for obtaining appropriate relief.  
20 Plaintiff will seek leave to amend when the true names, capacities,  
21 connections, and responsibilities of the Defendants and Does 1 through 10,  
22 inclusive, are ascertained.

23  
24       **JURISDICTION & VENUE:**

25       7. This Court has subject matter jurisdiction over this action pursuant to  
26 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28       8. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of  
2 the same transactions, is also brought under California's Unruh Civil Rights  
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
5 founded on the fact that the real property which is the subject of this action is  
6 located in this district and that Plaintiff's cause of action arose in this district.

7  
8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff went to the Store in November 2016 to shop.

10 11. The Store is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 12. Parking spaces are one of the facilities, privileges, and advantages  
13 offered by Defendants to patrons of the Store.

14 13. However, there were no parking spaces marked and reserved for  
15 persons with disabilities during plaintiff's visit.

16 14. Currently, there is not a single parking space marked and reserved for  
17 persons with disabilities in the parking lot serving the Store.

18 15. On information and belief, plaintiff alleges that the defendants once  
19 had a parking space marked and reserved for persons with disabilities.  
20 Unfortunately, the parking space was allowed to fade or get paved over.

21 16. Defendants do not maintain the parking lot and they have no plan or  
22 policy in place to maintain the parking lot so that accessible parking spaces  
23 remain in use for persons with disabilities.

24 17. Plaintiff personally encountered this barrier.

25 18. This inaccessible parking lot denied the plaintiff full and equal access  
26 and caused him difficulty and frustration.

27 19. Plaintiff would like to return and patronize the Store but will be deterred  
28 from visiting until the defendants cure the violations.

1       20. The defendants have failed to maintain in working and useable  
2 conditions those features required to provide ready access to persons with  
3 disabilities.

4       21. The violations identified above are easily removed without much  
5 difficulty or expense. They are the types of barriers identified by the  
6 Department of Justice as presumably readily achievable to remove and, in fact,  
7 these barriers are readily achievable to remove. Moreover, there are numerous  
8 alternative accommodations that could be made to provide a greater level of  
9 access if complete removal were not achievable.

10       22. For example, there are numerous paint/stripe companies that will come  
11 and stripe a parking stall and access aisle and install proper signage on rapid  
12 notice, with very modest expense, sometimes as low as \$300 in fully  
13 compliance with federal and state access standards.

14       23. Plaintiff is and has been deterred from returning and patronizing the  
15 Store because of his knowledge of the illegal barriers that exist. Plaintiff will,  
16 nonetheless, return to assess ongoing compliance with the ADA and will  
17 return to patronize the Store as a customer once the barriers are removed.

18       24. Given the obvious and blatant violation, the plaintiff alleges, on  
19 information and belief, that there are other violations and barriers on the site  
20 that relate to his disability. Plaintiff will amend the complaint, to provide  
21 proper notice regarding the scope of this lawsuit, once he conducts a site  
22 inspection. However, please be on notice that the plaintiff seeks to have all  
23 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034  
24 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,  
25 he can sue to have all barriers that relate to his disability removed regardless of  
26 whether he personally encountered them).

27       25. Additionally, on information and belief, the plaintiff alleges that the  
28 failure to remove these barriers was intentional because: (1) these particular

1 barriers are intuitive and obvious; (2) the defendants exercised control and  
 2 dominion over the conditions at this location and, therefore, the lack of  
 3 accessible facilities was not an “accident” because had the defendants  
 4 intended any other configuration, they had the means and ability to make the  
 5 change.

6  
 7 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 8 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all  
 9 defendants (42 U.S.C. section 12101, et seq.)

10 26. Plaintiff repleads and incorporates by reference, as if fully set forth  
 11 again herein, the allegations contained in all prior paragraphs of this  
 12 complaint.

13 27. Under the ADA, it is an act of discrimination to fail to ensure that the  
 14 privileges, advantages, accommodations, facilities, goods and services of any  
 15 place of public accommodation is offered on a full and equal basis by anyone  
 16 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 17 § 12182(a). Discrimination is defined, inter alia, as follows:

- 18 a. A failure to make reasonable modifications in policies, practices,  
 19 or procedures, when such modifications are necessary to afford  
 20 goods, services, facilities, privileges, advantages, or  
 21 accommodations to individuals with disabilities, unless the  
 22 accommodation would work a fundamental alteration of those  
 23 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 24 b. A failure to remove architectural barriers where such removal is  
 25 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 26 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
 27 Appendix “D.”
- 28 c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are  
2 readily accessible to and usable by individuals with disabilities,  
3 including individuals who use wheelchairs or to ensure that, to the  
4 maximum extent feasible, the path of travel to the altered area and  
5 the bathrooms, telephones, and drinking fountains serving the  
6 altered area, are readily accessible to and usable by individuals  
7 with disabilities. 42 U.S.C. § 12183(a)(2).

8 28. Any business that provides parking spaces must provide a sufficient  
9 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010  
10 Standards § 208. The required minimum number of handicap parking spaces  
11 is dependent on the total number of parking spaces available. *Id.* According to  
12 the 1991 Standards, if a parking lot has 1-25 spaces, it must have at least 1  
13 accessible parking space. 1991 Standards § 4.1.2(5)(a). And 1 in every 8 of  
14 those accessible parking spaces, but not less than 1, must be a “van” accessible  
15 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §  
16 4.1.2(5)(b). Under the 2010 Standards, a parking lot with 1-25 spaces must  
17 have at least 1 accessible space and 1 of them must be van accessible. 2010  
18 Standards § 208.2 & § 208.2.4.

19 29. Here, the failure to provide accessible parking spaces is a violation of the  
20 ADA.

21 30. A public accommodation must maintain in operable working condition  
22 those features of its facilities and equipment that are required to be readily  
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 31. Here, the failure to ensure that the accessible facilities were available  
25 and ready to be used by the plaintiff is a violation of the law.

26 32. Given its location and options, plaintiff will continue to desire to  
27 patronize the Store but he has been and will continue to be discriminated  
28 against due to the lack of accessible facilities and, therefore, seeks injunctive

1 relief to remove the barriers.

2  
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
4 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §  
5 51-53)

6 33. Plaintiff repleads and incorporates by reference, as if fully set forth  
7 again herein, the allegations contained in all prior paragraphs of this  
8 complaint.

9 34. Because the defendants violated the plaintiffs' rights under the ADA,  
10 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.  
11 Code § 51(f), 52(a).)

12 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
13 discomfort or embarrassment for the plaintiffs, the defendants are also each  
14 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
15 (c).)

16  
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this court award damages and provide  
19 relief as follows:

20 1. For injunctive relief, compelling defendants to comply with the  
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
22 Plaintiff is not invoking section 55 of the California Civil Code and is not  
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act which damages provide for  
25 actual damages and a statutory minimum of \$4,000.

1           3. Reasonable attorney fees, litigation expenses and costs of suit,  
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3  
4 Dated: June 15, 2017

CENTER FOR DISABILITY ACCESS

5  
6 By:   
7 Russell Handy, Esq.  
8 Attorneys for plaintiff  
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